



Administrative Policies and Procedures: 14.10

Subject:	Formal File Review Process for Indicated Abuse or Neglect Investigations
Authority:	TCA 37-1-401 et seq; 37-1-601 et seq; 37-1-607; 37-5-105; 37-5-106; 37-5-107; Child Abuse Prevention and Treatment Act (CAPTA)
Standards:	None
Application:	All Department of Children's Services Child Protective Services and Special Investigations Unit Employees

Policy Statement:

A Formal File Review¹ shall be provided to any individual² who has been classified as an indicated perpetrator of child abuse or neglect that disagrees with the indicated classification and want to appeal the decision.

Purpose:

The **Formal File Review** process is designed to provide the indicated perpetrator an opportunity to have an indicated classification reviewed; serve as a quality assurance mechanism to ensure compliance with applicable laws, rules and standards; and enhance the CPS Program by providing a review of the findings of indicated classifications.

Procedures:

Please note: All letters and correspondence referenced in this policy must be certified mail, return receipt requested, and marked "personal and confidential" on the envelope.

A. Appeal process requirement	Upon receiving a timely filed request for a Formal File Review within the established time frames outlined in this policy, from a perpetrator with an indicated classification of child abuse, severe child abuse, child sexual abuse or neglect, a Formal File Review of the case must be granted.
B. Informing perpetrator	1. Notice of right to review a) The case worker or team leader will send form Letter A, Notification to Perpetrator³ and Attachment to Letter A, form CS-0554, Request For Formal File Review by certified mail, return receipt requested or hand-delivered with signed acknowledgment of receipt, to the perpetrator's last known address within ten (10) business days after the case is classified as indicated. The case worker will keep copies of the above notification in the case file.

- b) If the above letters are hand-delivered and the perpetrator refuses to sign acknowledgment of receipt, the case worker will sign on the witness line and note that the recipient refused to sign.
- c) **If the indicated perpetrator in the classified report is a minor, the department shall notify the minor**, the child's Parent or Guardian, Child Protective Services, Regional Legal Counsel, and any Guardian Ad Litem or other Attorney for the child. The Parent/Guardian, Guardian Ad Litem or the child's Attorney may request a formal file review on the minor's behalf by completing form **CS-0554, Request for Formal File Review**.
- d) A copy of **Letter A, Notification to Perpetrator** and **CS-0554, Request for Formal File Review** must be sent to the **Regional Supervising Attorney**.
- e) The regional CPS Staff must complete the required information on form Letter A as follows:
- ◆ Agency address information,
 - ◆ Names of the child(ren),
 - ◆ Date(s) of the report,
 - ◆ Allegation(s),
 - ◆ Name of the indicated perpetrator, and
 - ◆ The classification decision(s).
- f) The notice of the right to review must contain the following information that:
- ◆ The individual has been identified as a perpetrator in an indicated case on any allegation of harm to a child.
 - ◆ The perpetrator may request a formal file review on form **CS-0554, Request for Formal File Review** within ten (10) business days of the date of the notice on **Letter A, Notification to Perpetrator**.
 - ◆ Failure to submit a request within the ten (10) business days, absent a showing of good cause, will result in the finding becoming final and will waive any right to review.
 - ◆ The request for a formal file review must be submitted to the attention of:
- Department of Children's Services
Child Protective Services Division
Formal File Review
8th Floor Cordell Hull Building,
436 Sixth Avenue North,
Nashville, TN 37243-1290**
- g) In order to ensure that an indicated perpetrator has adequate time to request a formal file review, the case worker or team leader must ensure that letters are mailed or hand-delivered in accordance with DCS Rules. (Refer to *B, 1, a.*)

- h) If a criminal, civil or administrative action has occurred by the date that the indicated classification is made, the team leader will ensure that **Letter E, Request to Stay Formal File Review** is submitted to the address below and procedures are followed as outlined in **Part D** of this policy:

**Department of Children's Services
Child Protective Services Division
8th Floor Cordell Hull Building
436 Sixth Avenue North
Nashville, TN 37243-1290**

2. Notice of review obligations

- a) The Reviewer must date stamp all requests for Formal File Reviews on the date received in Central Office.
- b) The Reviewer will respond to request for a Formal File Review within ten (10) business days of receiving the request for review by sending **Letter B, Acceptance of Formal File Review Request** that outlines the perpetrator's obligations in the file review process.
- c) The notice of review obligations will contain the following information:
 - ◆ The perpetrator's right to submit additional written information to the Reviewer within thirty (30) business days of the date on **Letter B**;
 - ◆ If he or she does not submit additional information within thirty (30) business days, the review will proceed with the information provided and the right to submit additional information will be forever waived; and
 - ◆ An exception to the time limit may be granted if the indicated perpetrator can show evidence of good cause. The Reviewer is responsible for determining a good cause exception. Some examples of "good cause" are, but not limited to:
 - 1) Failure to receive the notice,
 - 2) Severe illness, or
 - 3) Other disabling condition that substantially prevents the individual from submitting the information within the time limit.
- d) The team leader, upon receiving a copy of **Letter B** will:
 - ◆ Forward via Express Mail, within fifteen (15) business days, the entire original investigative file, which will include all paper documentation and electronic documentation (i.e., audiotapes, videotapes, photographs, etc.).
 - ◆ If the perpetrator is a minor who is in state custody, the team leader must contact the Regional Supervising Attorney to secure resources for assisting the minor with submitting additional written information to the Reviewer within thirty (30) business days of the date on **Letter B**.

C. Review of file	<p>1. Deadline for determining classification</p> <p>The Reviewer must, within ninety (90) business days of the receipt of the request for review, make a final determination as to whether the report is properly classified as “indicated.” The ninety (90) business day deadline will be delayed (day for day) by any stay of the formal file review process issued under Part D of this policy.</p> <p>2. Review Procedure Standards</p> <p>The determination decision is made by a preponderance of the evidence in:</p> <ol style="list-style-type: none"> Reviewing the investigative case file record; Conducting a telephone interview with the investigating case worker or team leader for the purposes of clarification of the case record, if needed; and Reviewing all additional information submitted by the perpetrator; as well as proof of one or more of the following factors: <ul style="list-style-type: none"> ◆ Medical and/or psychological information from a licensed physician, medical center, or other treatment professional, that substantiates that physical abuse, sexual abuse, or severe physical abuse occurred; ◆ An admission by the perpetrator; ◆ The statement of a credible witness or witnesses to the abusive or neglectful act; ◆ The child victim’s statement that the abuse occurred; ◆ Physiological indicators or signs of abuse or neglect, including, but not limited to, cuts, bruises, burns, broken bones or medically diagnosed physical conditions; ◆ Physical evidence that could impact the classification decision; ◆ The existence of behavioral patterns that may be indicative of child abuse/neglect and corroborates other evidence of abuse, severe child abuse, child sexual abuse, or neglect should be examined; ◆ The existence of circumstantial evidence linking the alleged perpetrator to the abusive or neglectful act(s) (e.g., child was in care of the alleged perpetrator at the time the abuse occurred and no other reasonable explanation of the cause of the abuse exists in the record). <p>3. Notice of result of review</p> <p>Once the Formal File Review has been completed, the Reviewer must send Letter C, Notice of Results to Perpetrator of the final results of the review and that no further appeal or review of the investigation is provided.</p> <p>4. Change of classification</p> <p>If the review determined a need to modify the classification, the supervisor in the investigating county will <u>immediately</u> ensure:</p> <ol style="list-style-type: none"> The change in classification is made in all related documents and computer entries;
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	<ul style="list-style-type: none"> b) The central office staff will document the change on the TNKids classification change tab; c) A revised CPS Investigation Summary and Classification Report (form CS-0740) reflecting the change of classification will be submitted to the appropriate Juvenile Court and/or District Attorney and a copy placed in the case file. <p>5. Follow-up with Case Worker</p> <p>The supervisor must review the case file with the case worker to discuss and note any improvements in practice recommended by the Formal File Review.</p>
<p>D. Conditions for stay or termination of review process</p>	<p>1. Stay of review process</p> <ul style="list-style-type: none"> a) After receiving notification from Central Office staff, Letter E, CS-0667, Request to Stay Formal File Review, of any judicial or administrative proceeding underway which stems from the same allegations as the child abuse or neglect investigation. b) The reviewer must immediately stay the Formal File Review of an indicated child abuse or neglect investigation if the perpetrator has been: <ul style="list-style-type: none"> ◆ Arrested and charged or indicted on criminal charges stemming from the same allegations as the child abuse or neglect investigation; or ◆ Named or the alleged abuse or neglect is an issue in a civil, judicial or other administrative proceeding stemming from the same allegations as the child abuse or neglect investigation. c) If charges were expected but not initiated prior to the closure of a case, the team leader must make contact with persons to obtain an update of any pending charges, prior to sending the CPS case file for review. d) Upon staying a formal file review, the reviewer must, within ten (10) business days, send a notice of the stay via Letter F, Notice of Decision to Stay Proceedings/Rules to the perpetrator. The notification must contain the procedures for reinstatement of the review process and for the termination of the review process. e) The CPS case file will not be sent for review if the case is stayed. <p>2. Termination of review process</p> <p>The reviewer will terminate the Formal File Review for any perpetrator who:</p> <ul style="list-style-type: none"> a) Is found guilty or enters a guilty plea to any offense stemming from the same circumstances as the allegations of child abuse or neglect; or b) Through any court or administrative proceeding, receives a judicial or administrative adjudication that he or she has committed, or has knowingly allowed to be committed, any act that would constitute neglect as defined in <i>TCA 37-5-103(8)</i>, or physical abuse, severe child abuse as defined in <i>TCA §37-1-102(b)(1) and (12)</i> or any act that constitutes child sexual abuse as defined in <i>TCA §37-1-602(a)(2)</i> stemming from the same

	<p>allegations.</p> <p>c) Upon termination of review process, the reviewer will send Letter F, Notice of Decision to Stay Proceedings-Rules to the perpetrator. The notification will contain the reason for the termination of the review process. The supervisor must submit Court document.</p> <p>3. No further right to review</p> <p>The reviewer must consider any conviction or adjudication listed above to be conclusive evidence that the individual is the perpetrator in the DCS "indicated" allegation(s) and the perpetrator has no further right to the Formal File Review provided by this policy. The supervisor must submit the court document in this situation.</p> <p>4. Reinstatement of right to review</p> <p>If court proceedings stemming from the same allegations do not result in a conviction or adjudication on child abuse or neglect stemming from the same allegations, the perpetrator may reinstate the right to review, provided that the Department receives a written request for reinstatement of review along with the Court order or other Court documentation from the perpetrator within thirty (30) business days of the final disposition by the Court or administrative proceeding.</p>
E. Non-release of records	<p>Unless the emergency procedures as outlined in DCS Policy 14.11, Due Process Rights and Reviews apply, the findings of a Formal File Review must not be released to any person other than the perpetrator and appropriate DCS staff, except as provided for in the DCS Policy 14.13, Confidentiality of Child Protective Services Cases and Information.⁴</p>

Forms:	<p><u>Form Letters:</u></p> <p><u>Letter A - Notification to Perpetrator/Request For Formal File Review</u></p> <p>♦ <u>Attachment to Letter A</u></p> <p><u>Letter B – Notice of Request for Formal File Review</u></p> <p><u>Letter C – Notice of Results to Perpetrator</u></p> <p><u>Letter D – Notice of Classification (to Region)</u></p> <p><u>CS-0667, Letter E - Request to Stay Formal File Review</u></p> <p><u>Letter F - Notice of Decision to Stay The Proceedings</u></p> <p><u>Letter G – Notice of Decision to Stay the Review Due to Circumstances of the Case</u></p> <p><u>Letter H – Notice of Change of Classification or Allegation to Perpetrator</u></p> <p><u>CS-0740, CPS Investigation Summary and Classification Report</u></p>
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Glossary:	
Term	Definition
Formal File Review:	A paper review of an indicated perpetrator's case file by DCS File Reviewer.
Good Cause:	A substantial reason that affords a legally sufficient ground or reason (i.e., failure to receive notice, severe illness or other disabling condition that substantially prevents the action required).
Indicated classification:	An investigation that has been reviewed by the team leader (or designee) and approved as meeting the classification standard for preponderance of evidence for child abuse.
Perpetrator:	An individual found, through a Child Protective Services investigation, to have committed child abuse or neglect.
Preponderance of Evidence:	Standard of proof whereby the greater weight of evidence presented supports a particular allegation. Shows the fact sought to be proved is "more probable than not."
Express Mail:	Delivery service via any mail carrier capable of tracking lost packages.

¹ Exception: This Formal File Review does not apply to the classification "allegation indicated, sexually reactive child".

² Herein referred to as "perpetrator."

³ Letter A and form CS-0554 will be computer-generated but will remain in hard copy format on the DCS Form Web page in the event of electronic failure

⁴ **Note:** Anytime the Department decides to share information about an indication of any type of abuse with a person's employer, the alleged perpetrator must be afforded an administrative hearing. No information can be shared before the emergency formal file review. After that, an administrative hearing must be offered to the alleged perpetrator.